

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA, :
:
- v. - : 13 Cr. 616 (VB)
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ROBERT LUSTYIK, :
:
Defendant. :
:
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GOVERNMENT'S PROPOSED EXAMINATION OF PROSPECTIVE JURORS

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The Government respectfully requests, pursuant to Rule 24(a) of the Federal Rules of Criminal Procedure, that the Court include the following questions in its examination of prospective jurors.

A. The Charges

1. This is a criminal case. The defendant, ROBERT LUSTYIK, has been charged in an indictment with violating federal laws.

2. The indictment is not evidence. It simply contains the charges that the Government must prove to the jury beyond a reasonable doubt. I will summarize the charges in this case in order to determine whether there is anything about the nature of this case which may make it difficult or inappropriate for any of you to serve on the jury.

3. According to the indictment, the defendant and others engaged in a bribery scheme. As part of the scheme, the defendant, a Special Agent with the Federal Bureau of Investigation ("FBI")

during the time period of the indictment, is alleged to have exchanged confidential information and documents to which he had access by virtue of his position with the FBI, for money and the promise of additional money. The defendant is alleged to have engaged in the bribery scheme while working in the White Plains, New York Resident Agency of the FBI. The information and documents he is alleged to have exchanged for bribes and the promise of additional bribes relate to individuals who are allegedly political figures in Bangladesh.

4. The defendant is charged in an Indictment with five counts: (1) bribery conspiracy; (2) bribery; (3) conspiracy to commit honest services wire fraud; (4) theft of government property and (5) unauthorized disclosure of a suspicious activity report.

5. Do any of you believe you have personal knowledge of the case as I have described it?

6. Has any juror seen, read, or heard anything about this case? If so, is there anything such a juror has read or heard that would cause him or her to feel that he or she cannot decide the fact issues of this case fairly and impartially?

7. Do any of you feel, for any reason, that you could not view fairly and impartially a case involving charges such as I have described?

B. Nature of the Charges

8. As you can tell, during the trial, you will hear evidence

concerning bribery and the deprivation of honest services. Does the fact that the charges involve allegations of bribery and the deprivation of honest services by a law enforcement agent make it difficult for any of you to render a fair verdict?

C. Knowledge of the Trial Participants

9. As I mentioned previously, the defendant in this case is ROBERT LUSTYIK.

10. The defendant is represented by Raymond Mansolillo.
[Please ask the attorney to stand.]

11. The Government is represented here, as in all cases where it is a party before this Court, by the United States Attorney for the Southern District of New York, who is Preet Bharara. The Government is also represented by the Chief of the Public Integrity Section of the Department of Justice, who is Jack Smith. The conduct of the trial will be in the immediate charge of Assistant United States Attorney Benjamin Allee, and Trial Attorney Emily Rae Woods. They will be assisted by Special Agents Kerwin John and Tom Hopkins of DOJ OIG, and Shannon Becker, a paralegal specialist in the U.S. Attorney's Office. [Please ask the AUSAs, agent, and paralegal to stand.]

12. Do any of you know any of the defendant, the attorneys, agents, or paralegals I have just identified?

13. Do any of you know, or have any of you or your relatives or close friends had any association or business dealings with, any

member of the staff of the defendants' attorneys, their law firms, the United States Attorney's Office for the Southern District of New York, the Public Integrity Section of the Department of Justice, DOJ OIG, or the FBI?

14. I will now read a list of names, entities, and locations that may be mentioned during the trial. Some of the individuals may be witnesses in this case. [To be provided in advance of trial.]

15. Are any of you familiar with the locations I mentioned? Do any of you know any of these individuals or entities? Have you had any dealings either directly or indirectly with any of these individuals or entities?

16. If so, is there anything about your familiarity with or knowledge of these individuals, entities, or locations that could affect your ability to be fair and impartial in this case?

D. Relationship with Government

17. Does any juror, or his or her relatives or close friends, work in law, law enforcement, the justice system, or the courts? In what capacity? Has any juror had any contact with anyone in law, law enforcement, the justice system or the courts that might influence your ability to evaluate this case?

18. Have you, or has any member of your family or any close friend, either as an individual or in the course of his or her business, ever been a party to any legal action or dispute with the

United States or any of the departments, agencies, or employees of the United States, including the Internal Revenue Service?

19. Has any juror, either through any experience he or she has had or anything he or she has seen or read, developed any bias or prejudice or other feelings for or against the United States Department of Justice, the United States Attorney's Office for the Southern District of New York, or DOJ OIG?

E. Prior Jury Service

20. Have any of you ever sat as a juror before in any type of case?

21. If so, please state whether the case was in state or federal court, whether it was a civil or criminal matter, and, without telling us what the verdict was, whether a verdict was reached.

22. Have any of you served as a grand juror?

23. If so, please indicate where and when you served, and describe, in general terms, the kind of cases you heard.

24. For those of you who have described prior jury service, is there anything about your prior experiences as a juror that would prevent you from acting as a fair and impartial juror in this case?

F. Experience as a Witness, Defendant, or Crime Victim

25. Have you, or any member of your family or any close friends, ever participated in a state or federal court case,

whether criminal or civil, as a witness, plaintiff, or defendant?

If so, what kind of case? And, what was your role in that case?

26. Is there anything about that experience that would prevent you from acting as a fair and impartial juror in this case?

27. Have you, or a relative or close friend, ever been charged with a crime? If so, is there anything about that experience that would prevent you from acting as a fair and impartial juror in this case? Again, if you would prefer not to give your answer in open court, please say so.

28. Have you, or a relative or a close friend, ever been questioned in any matter by the United States Department of Justice, the United States Attorney's Office for the Southern District of New York, or DOJ OIG? If so, is there anything about that experience that could affect your ability to be fair and impartial in this case?

G. Views on Certain Witnesses and Investigative Steps

29. The Government witnesses may include law enforcement witnesses. Does anyone have any personal views or experiences with law enforcement that would in any way affect their ability to be fair and impartial in this case? Would any of you be more inclined or less inclined to believe a witness solely because the witness was an FBI agent, police officer or other law enforcement officer?

30. You may hear evidence that law enforcement officers conducted lawful searches of email accounts, cell phones, and

homes. Does anyone have an opinion about such searches that that would in any way affect their ability to be fair and impartial? Would you be able to follow my instruction that the evidence obtained pursuant to the searches was lawfully obtained and may properly be considered by you at this trial?

H. Persons Not on Trial

31. You might hear evidence in this trial of criminal activity committed by people other than the defendant. Those other individuals are not on trial here. You may not draw any inference, favorable or unfavorable, towards the Government or the defendant from that fact. You also may not speculate as to the reason why other persons are not on trial. Is there any juror who cannot follow this instruction or who for this reason would have difficulty rendering a fair and impartial verdict?

I. Ability to Sit as a Juror

32. Do any of you have problems with your hearing or vision which would prevent you from giving full attention to all of the evidence at this trial?

33. Are any of you taking any medication, or do any of you have any medical condition, that would prevent you from giving full attention to all of the evidence at this trial?

34. Do any of you have any difficulty in reading or understanding English?

35. Do any of you have any religious, philosophical or other

beliefs that would make you unable to render a guilty verdict for reasons regardless of the evidence?

36. With respect to any publicity this trial generates, will each of you accept the proposition that you should absolutely avoid reading about this case in the newspapers or electronic media and listening to any radio or television reports concerning the case until after it is over? If not, please raise your hand.

J. Function of the Court and Jury

37. The function of the jury is to decide questions of fact. You are the sole judge of the facts and nothing that the Court or the lawyers say or do may encroach in any way on your role as the exclusive fact-finder. When it comes to the law, however, you are to take your instructions from the Court, and you are bound by those instructions. You may not substitute your own notions of what the law is, or what you think it should be. At the conclusion of the case, your job will be to determine whether or not the defendant is guilty as charged in the indictment. Does any juror have any bias or prejudice that might prevent or hinder him or her from accepting the instructions of law that I will give you in this case?

38. Will each of you accept that the question of punishment is for the Court alone to decide, and that the possible punishment must not enter into your deliberations as to whether the defendant is guilty or innocent?

39. Will each of you accept that sympathy must not enter into the deliberations of the jurors as to guilt or innocence of the defendant, and that only the evidence produced here in Court may be used by you to decide the guilt or innocence of the defendant?

40. It is not a particularly pleasant duty to find another individual guilty of committing a crime. Is there any juror who feels that even if the evidence established the defendant's guilt beyond a reasonable doubt, he or she might not be able to render a guilty verdict for reasons regardless of the evidence?

K. Other Biases

41. In these questions, I have tried to direct your attention to possible reasons why you might not be able to sit as a fair and impartial juror. Apart from any prior question, does any juror have the slightest doubt in his or her mind, for any reason whatsoever, that he or she will be able to serve conscientiously, fairly and impartially in this case, and to render a true and just verdict without fear, favor, sympathy or prejudice, and according to the law as it will be explained to you?

L. Juror's Background

42. The Government respectfully requests that the Court ask each juror to state the following information:

- a. the juror's age;
- b. the area in which the juror resides and any other area the juror has resided during the last ten years;

- c. the juror's educational background, including the highest degree obtained;
- d. the juror's occupation;
- e. the name of the juror's employer, and the period of employment with that employer;
- f. the same information concerning other employment within the last five years;
- g. the same information with respect to the juror's spouse and any working children;
- h. websites, newspapers, and magazines the juror reads and how often;
- i. television programs the juror regularly watches;
- j. the juror's hobbies and leisure-time activities; and
- k. whether the juror is a member of any clubs or organizations.

M. Requested Instruction Following Impaneling of the Jury

43. From this point until the time when you retire to deliberate your verdict, it is your duty not to discuss this case with anyone, including your fellow jurors, and not to remain in the presence of other persons who may be discussing this case. The rule about not discussing the case with others includes discussions even with members of your own family, and your friends.

44. Do not read or listen to anything touching on this case in any way. With respect to any publicity this case generates, you are instructed not to read, listen to, or watch any news or other reports about the case. You must not be influenced by anything you might hear or see outside the courtroom.

45. Do not do any research or investigation about the case or anything touching upon the case. Do not go on the Internet to do any searches about this case or these kinds of cases or any of the individuals involved.

46. If at any time during the course of this trial, any person attempts to talk to you or to communicate with you about this case, either in or out of the courthouse, you should immediately report such an attempt to me through my deputy clerk. In this regard, let me explain to you that the attorneys and the defendants in a case are not supposed to talk to jurors, not even to offer a friendly greeting. So if you happen to see any of them outside this courtroom, they will, and should, ignore you. Please do not take offense. They will be acting properly by doing so.

Dated: White Plains, New York
November 3, 2014

Respectfully submitted,

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United States Attorney

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